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## Senate

The Senate met at 9:30 a.m. and was called to order by the President pro tempore (Mr. STEVENS).

The PRESIDENT pro tempore. The Senate will be led in prayer today by our guest Chaplain, Dr. John Tolson, First Presbyterian Church, Orlando, FL.

### PRAYER

The guest Chaplain offered the following prayer:

Our Gracious Heavenly Father, we thank You for the gift of this day, for Your incredible love for us and for the privilege and opportunity of and the freedom in which we live. May our lives reflect our gratitude for all these things by living according to Your purpose.

Father, we realize that our children, to a large extent, will become like us as parents. In the same way the shaping of our Nation will be molded by its leaders. May we be willing to ask if we, as leaders, are like what You want our Nation to become.

Your word says, "Blessed are the poor in spirit." In our great and rich Nation, too many find themselves spiritually poor. Father, help them to open their eyes to Your love. Please help all of us to understand that no woman or man can open his or her heart without humility and willingness to accept their dependence on You.

On this day when we honor President Lincoln and all he did to unite our Republic, we recall how he never lost sight of Your hand of grace and guidance.

Father, help and encourage the Members of this great body to aspire to excellence as Senators, as leaders, and as Americans. Build Your character into their lives so that their conduct will be a reflection of You.

And now, may the living Lord be with you this day; may He go above you to watch over you, behind you to encourage you, beside you to befriend you, and within you to give you peace

and before you to show you His way. Amen.

### PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

### RECOGNITION OF THE MAJORITY LEADER

The PRESIDING OFFICER (Mr. BROWNBACK). The majority leader is recognized.

### SCHEDULE

Mr. FRIST. The Senate will resume consideration of the nomination of Miguel Estrada to be a circuit judge for the DC Circuit. We have spent 4 days and over 20 hours debating this eminently qualified nominee. Yesterday 14 Senators participated in the debate. To afford Senators ample time to fulfill their constitutional advise and consent responsibilities and to facilitate unfettered consideration of this nomination, I expect tonight to be a very late night. Senators are encouraged to come to the floor over the course of today to engage in this debate.

The Democratic leader and I have discussed options to conclude the Senate's constitutional responsibilities as they pertain to this nominee. My colleagues on the other side of the aisle continue to object to any time agreement and refuse to set a time for a dispositive vote. My objective is to provide all Senators with sufficient opportunity to debate the merits of this nominee and then to move this nomination to a final vote.

Therefore, once again, I encourage Senators to come to the floor today and this evening and, if necessary, tomorrow and tomorrow evening, to ex-

press their views so a final vote can be scheduled. I do hope the Democratic leader will assist me in achieving this goal.

In addition, the Senate continues to wait for the completion of the very important conference report on the omnibus appropriations bill. Those discussions have gone on over the course of the last several days, well into last night and over the course of this morning. This omnibus appropriations bill—I believe I speak for both sides of the aisle—is a must-pass item to be addressed and ultimately passed prior to any recess.

Mr. REID. While the majority leader is on the floor, Mr. President, we on this side are prepared to stay as long, of course, as the leader asks us to do so. But because we will have to have people here to make sure there are people on the floor to discuss whatever they feel they want to discuss during this nomination process, do you have an idea how late you might want us to stay tonight?

Mr. FRIST. Mr. President, I want to provide ample opportunity. We have been on this nomination since last Wednesday. I would expect we will be here very late into the evening; I don't know what time. But if we are to achieve having a recess at all, I do want to be able to fully address the issue of the omnibus appropriations and the Estrada nomination. I would think it is going to be very late tonight, but I can't give an exact time.

Mr. REID. As I said last night, as Senator HATCH and I were closing the Senate, everything has been said, but not quite everyone has said it, on the nomination of Miguel Estrada. Both sides have talked about what they like and dislike about this nomination. Yesterday, of course, there were a lot of repetitive statements.

We will be here. I think it is quite clear that we won't be speaking much about Miguel Estrada as the day proceeds. We will want to talk about

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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Chairman Greenspan's statements and other issues we think are just as important to talk about. But during these nominations, when there is extended debate, we are allowed to do that. Whatever the leader wants us to do, we are here. Whether it is tonight, tomorrow night, Friday, Saturday, whatever it is, we will be at your disposal.

Mr. FRIST. Mr. President, I appreciate the comments of the assistant Democratic leader. My objective is to fully address the nomination of this outstanding, well-qualified candidate. If we really get to the point where the other side of the aisle says there is nothing more to be said, I would simply ask that we do take this to a vote and give us in this body the opportunity to vote, yes, we are for the nomination or, no, we are against the nomination, if we really have had full debate, and from what I have just heard we are getting close to that point, and if everything has been said.

But the one thing I don't want to happen is for people to be critical: We didn't have enough time; we didn't have enough opportunity to debate.

Our willingness to at least present why we believe Miguel Estrada is extremely well qualified is close to being fulfilled. And if we get to the point where there is nothing more to say on the other side of the aisle, then we would expect, if that is the case, an up-or-down vote. I think that signal is being sent strongly through our colleagues and what has happened on the floor this week.

I think America is paying attention, recognizing that at this juncture, we believe Miguel Estrada is well qualified and that there is a critical, drastic shortage of Federal judges today. When you put those two together—that we feel strongly Miguel Estrada is a well-qualified judge and that there is a drastic shortage of judges and our responsibility to address that issue, which we are doing well on the floor now—we would expect that up-or-down vote in the next couple of days.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I compliment the leader. In the short time he has been leader, he has allowed full and adequate debate. He could have tried to stop debate on the omnibus bill, and the leader chose not to do that, and I think it worked to everyone's advantage. On this side of the aisle, we appreciate that very much.

I do say, though, speaking as one Senator, but having spent a little time on this floor, just about everything has been said about Miguel Estrada. There will be other people who wish to make statements. As I said, everything has been said but not everyone has said it. We will do everything we can to make sure everyone has said it. The majority leader is going to find there will be other issues spoken about here. We are not going to—there is no reason to mince around. We are not going to allow an up-or-down vote on Miguel Estrada. That is clear.

Our leader gave a speech yesterday to that effect. So the majority leader has

to make a decision whether this nomination is going to be pulled, whether the memos will be supplied to us so we can review them, whether there is going to be more opportunity to ask questions, or whether there is going to be a vote on cloture. Those are the three choices the leader has.

Mr. FRIST. Mr. President, I agree, in essence, those are the three choices, and as majority leader, I consider what I feel is stalling on this nomination and not allowing an up-or-down vote of sufficient importance that we will continue to address it. There are many other important issues this Senate must address. If we could just agree on an up-or-down vote right now, which the distinguished assistant Democratic leader has said they are not going to do on the other side of the aisle, we could go on to address these other important issues.

I do want to make it clear, both to this body, to the House of Representatives, and to America, this side of the aisle is ready for an up-or-down vote since, as we just agreed, there has probably already been adequate debate put forward, and I think it is important for America to understand your side of the aisle—whether you use the word “filibuster” or not—is obstructing or stalling the process which is important to our judicial system and to our responsibilities, our constitutional responsibilities in this body.

#### RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, the leadership time is reserved.

#### EXECUTIVE SESSION

#### NOMINATION OF MIGUEL A. ESTRADA, OF VIRGINIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT

The PRESIDING OFFICER. Under the previous order, the Senate will now go into executive session to resume consideration of Executive Calendar No. 21, which the clerk will report.

The legislative clerk read the nomination of Miguel A. Estrada, of Virginia, to be United States Circuit Judge for the District of Columbia Circuit.

The PRESIDING OFFICER. Who seeks recognition?

The Senator from Vermont.

Mr. LEAHY. Mr. President, I will be very brief. I see the distinguished chairman of the committee on the floor. Under normal procedures, he would speak first. I appreciate his courtesy in withholding for a moment.

A lot has been said, and as the distinguished senior Senator from Nevada said, not all have said it. There is actually one person who, were he to speak, could speed this whole matter up very quickly. Miguel Estrada has written extensively on his views on very complex issues on law which would be of great interest to those who have to

vote on somebody for a lifetime position in the courts. He has written extensively, but he has kept the writing secret.

We have ample precedent for similar writings that have been made available for everything from a nomination of a man who became Attorney General to a man who became the Chief Justice of the United States, William Rehnquist. The Democratic leader and I wrote to the President and asked once again: Release those secret writings.

Ironically, Mr. Estrada told us, when asked, he had no objection to those writings being released. He has no objection to them being released. It is only the White House has said: We will not release them. If they were released, I suspect we would then have a discussion of what is in those writings, and we would go to a vote up or down, win or lose.

At least we would know what we are voting on. We would not have a stealth candidate before the Senate. I think the White House ought to look at the fact Mr. Estrada has said he has no objection to his writings being made public. They ought to make them public, and then we can go ahead and complete action up or down on this nominee.

Again, I thank my good friend from Utah for his courtesy in letting me go forward. I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, it is interesting that my colleague, who is my friend, says Miguel Estrada is holding this process up, and then at the end of his remarks says he has agreed, he has no objections to giving these documents, but they never emphasize the fact the Justice Department is highly justified, is absolutely right, and has the opinion of the seven former Solicitors General saying these types of confidential memoranda should not be given to the Judiciary Committee or to Congress. The reason for this is that these memoranda are utilized in deciding what the Solicitor General's Office should do with regard to various cases.

If these memoranda become readily available or available at all outside the Justice Department, this would chill the honest, forthright deliberations, suggestions, and recommendations by those who work in the Justice Department. I do not think it takes any brains to realize the Justice Department is totally right.

Miguel Estrada is being blamed because the Justice Department, in accordance with their seven former Solicitors General, refuses to give up these confidential memoranda, which are privileged, so the Democrats can go on a fishing expedition and see if they can find some matters in those memoranda with which they disagree. They can then say: We cannot confirm him because he wrote some memoranda with which we disagree.